

COMMISSION ON UNEMPLOYMENT COMPENSATION

2004 WORK PLAN DRAFT

Senator John C. Watkins, Chairman
Delegate Harry R. Purkey, Vice-Chairman

I. BACKGROUND AND STATUTORY FRAMEWORK

Senate Bill 889, passed in the 2003 Session of the General Assembly, established the Commission on Unemployment Compensation. The Commission is the successor to the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Trust that was established by Senate Joint Resolution 133 in 1977 to review the current status of, and long-term projections for, Virginia's Unemployment Trust Fund. The Commission's statutory authority is set out in Chapter 33 (§§ 30-218 et seq.) of Title 30 of the Code of Virginia, and is scheduled to expire on July 1, 2006. The Commission is authorized to evaluate the impact of existing statutes and proposed legislation on Virginia's unemployment compensation system; assess the effectiveness of the unemployment compensation program; monitor the Unemployment Trust Fund; and report annually to the General Assembly and the Governor.

Commission tasks for the 2004 interim include:

- Monitor Trust Fund solvency [Summer & Fall 2004].
- Consider an increase in the taxable wage base from \$8,000 to \$12,000 [Fall 2004].
- Consider raising the minimum rate for Fund building taxes [Fall 2004].
- Monitor implementation of new laws [Summer & Fall 2004].
- Review legislation that was continued to the 2005 General Assembly session [Fall 2004].
- Monitor state unemployment tax (SUTA) dumping and consider needed legislation [Fall 2004].
- Examine benefits charging and determine whether to recommend legislation [Summer & Fall 2004].
- Continue monitoring implementation of 2003 legislation mandating coordination of workforce training resources [Fall 2004].
- Review implementation of a new law addressing evaluation of job-training programs [Fall 2004].

II. ISSUES THE COMMISSION WILL CONSIDER IN 2004

A. Status of the Unemployment Trust Fund

1. Status of the Trust Fund

The level of solvency of the Unemployment Trust Fund is determined annually by dividing the Fund's balance on June 30 by the amount, determined through a statutorily-

prescribed formula, required for an adequate fund balance.¹ Based on the most recent data provided by the VEC in January 2004, by January 1, 2004, the Trust Fund balance is projected to be just over \$200 million and the solvency level at 31.4 percent. Solvency levels projected beyond 2004 are 46 percent in 2005; 66 percent in 2006; and 77 percent in 2007. Projected employer tax rates will increase slightly from \$77 in 2003 to \$143 in 2004, \$159 in 2005, \$171 in 2006, and \$136 in 2007. **The VEC will present a report on Trust Fund solvency at each meeting of the Commission in 2004. [Summer & Fall 2004].**

B. Unemployment Compensation Program Issues

1. Recommendations Made in the Vroman Report²

The Vroman Report contained 16 recommendations. The 2004 Report of the Commission on Unemployment Compensation ("Report") details the Commission's action on two recommendations, and summarizes the six recommendations that suggest retaining current program structure as is. The Report details the three recommendations that are not feasible for consideration until the Trust Fund's solvency has been restored to a more adequate level, one recommendation (a detailed analysis of Virginia's low first payment rate) that is not feasible given its expense, and two recommendations (regarding diversion of revenue for job training or economic development) that the Vroman Report recommends for future study. The two remaining recommendations are:

- *Raise the taxable wage base from \$8,000 to \$12,000.* Dr. Vroman concludes that such an increase would make more equitable the balance of payments between high-wage and low-wage employers. Virginia now raises revenues for the Trust Fund from less than one fourth of taxable wages, and the low level of tax base makes it increasingly likely that the fund building tax and the pool charges will be activated in future years. Raising the taxable wage base would change the mix of revenues to an increased share based on scheduled taxes, and make the fund less dependent on flat rate taxes. The short-term effect would increase revenues and speed the recovery of the Trust Fund. **The Commission will continue to study this issue during the 2004 interim. [Fall 2004]**
- *Virginia should consider raising the maximum rate for Fund building taxes.* Increasing the maximum solvency tax from its present 0.2 percent of taxable wages to 0.4 percent, or having a graduated structure with rates of both 0.2 percent and 0.4 percent, when the Trust Fund balance reaches very low levels would ensure a faster recovery of the Trust

¹ The amount required to have a solvent trust fund is equal to (i) 1.38 multiplied by (ii) the average of the three highest ratios of benefits to total wages during the preceding 20 years multiplied by (iii) total wages paid by taxable employers for the year ending June 30.

² The General Assembly authorized a two-year actuarial analysis of Virginia's unemployment compensation system. Dr. Wayne Vroman, Urban Institute, presented the final report to the Joint Subcommittee Studying the Unemployment Trust Fund in December 2002. The Commission voted unanimously to accept the report (with the clarification that acceptance did not constitute an endorsement of the report's recommendations) at its June 17, 2003 meeting. Dr. Vroman's report is summarized in the Report of the Joint Subcommittee Studying the Funding Requirements of the Virginia Unemployment Trust Fund (H. Doc. 30, 2003).

Fund balance following a recession. **The Commission will continue to study this issue during the 2004 interim. [Fall 2004]**

2. Legislation Enacted in the 2004 Session

Several bills enacted into law in the 2004 General Assembly Session affect the Unemployment Compensation Program.³ **The Commission will monitor implementation of new law via regular briefings from the VEC. [Summer & Fall 2004]**

3. Carryover Legislation

i. Benefit Offsets

The Vroman report made no recommendations regarding offsets applied to benefit amounts, but indicated that Virginia was one of the two most stringent states in requiring a full reduction of unemployment compensation benefits for any retirement payments. Legislation enacted in 2003 (Senate Bill 1014 (Sen. Watkins) and House Bill 1431 (Del. Johnson)) provide that weekly unemployment compensation benefits are reduced by an amount equal to 50 percent of the Social Security Act or Railroad Retirement Act retirement benefits received by the individual. In the 2004 General Assembly Session:

- Senate Bill 128 (Watkins) sought to eliminate the offset for Social Security or Railroad Retirement Act benefits during periods when the unemployment Trust Fund has a solvency level of 50 percent or more. When the Trust Fund's solvency

³ Enacted legislation in the 2004 General Assembly includes:

- ✓ House Bill 288 (Del. Griffith) provides that benefit disqualifying misconduct includes a willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed by the Commonwealth, which violation would cause the employer to be sanctioned or have its license suspended by the Commonwealth.
- ✓ House Bill 529 (Del Hogan) excludes from the definition of "employment services," for the purposes of unemployment compensation benefits, work performed by an inmate of a custodial or penal institution for the institution or while in the Diversion Center Incarceration Program.
- ✓ Senate Bill 9 (Sen. Ruff) eliminates the requirement that the VEC develop a workforce plan to be implemented during times of economic recession, natural disaster or military mobilization to facilitate mobilization of needed workers.
- ✓ Senate Bill 130 (Sen. Watkins), increases the penalty assessed against employers for filing a late report from \$30 to \$75.
- ✓ Senate Bill 179 (Sen. Blevins) provides that an employer shall not be responsible for benefit charges (not to exceed four weeks) due to unemployment resulting from a temporary work closure forced by a disaster for which the Governor has declared a state of emergency.
- ✓ Senate Bill 194 (Sen. Reynolds) provides that where an employee gives notice of resignation, and the employer subsequently terminates him effective prior to the date specified in the resignation notice, the employer shall be liable for a maximum of two weeks of benefits (absent a finding of good cause for the employee's resignation or misconduct).
- ✓ SB 664 (Sen. Wagner) requires that any bills that enhance unemployment compensation benefits include a statement as to whether its passage would result in a net revenue loss to the Commonwealth. The statement must be included as a second or final enactment clause in the legislation. The VEC is to work with the Department of Planning and Budget in preparation of the revenue loss statement.

level is below 50 percent, weekly unemployment benefits will continue to be reduced by 50 percent of the amount of such retirement benefits. The bill was reported unanimously from the Senate with a technical amendment that revised its effective date. The bill was reported from the House Commerce and Labor Committee on a vote of 12-10, then was re-referred to Committee on the House floor, where it was continued to 2005. **The Commission will review the bill. [Fall 2004]**

- House Bill 505 (Keister) sought to increase the amount of wages that a recipient of unemployment benefits can earn, without having such benefits offset by the amount of wages, from \$25 to \$100. Although the bill was tabled in the House Commerce and Labor Committee, the Committee chairman acknowledged the importance of the issue and recommended that it be considered by the Commission during the interim to better assess the need for a change. **The Commission will review the bill. [Fall 2004]**

ii. *Minimum qualifying base period income.*

- Senate Bill 621 (Wagner) increases from \$2,500 to \$3,500 the amount that an employee must have earned in the two highest earnings quarters of his base period (the first four of the preceding five calendar quarters) in order to be eligible for unemployment compensation benefits. The bill was continued to 2005 in the Senate Commerce and Labor Committee. **The Commission will review the bill. [Fall 2004]**

iii. *Trailing military spouse.*

- House Bill 1288 (Tata) provides that good cause for leaving employment exists if an employee voluntarily leaves a job to accompany his spouse to a new military assignment from which the employee's place of employment is not reasonably accessible. Benefits paid to qualifying claimants shall be charged against the pool rather than against the claimant's employer. The bill was initially defeated on the House floor, then reconsidered and passed. The bill was continued to 2005 in the Senate Commerce and Labor Committee. **The Commission will review the bill. [Fall 2004]**

4. SUTA Dumping

State unemployment tax (SUTA) dumping occurs when a company reorganizes or acquires another company in order to obtain a lower tax rate. The VEC briefed the Commission on this issue at the November 17, 2003 meeting. There is concern nationally that employers are using such strategic business practices to avoid paying taxes based on their true employment experience. **The Commission will monitor this issue on an ongoing basis and consider necessary legislation. [Fall 2004]**

5. Benefit Charging

In the 2003 General Assembly Session, Delegates Abbitt and Tata introduced bills changing the way benefits are charged to employers. HB 2264 (Del. Abbitt) would have required all benefit charges to be assessed against the most recent employer, regardless of the duration of employment. The bill sought to change the current practice of charging a reimbursable employer for benefits in cases where that employer was not the discharging employer. HB 2485 (Del. Tata) would have proportionately charged all taxable employers in a claimant's base period rather than only the most recent taxable employer (which is current practice). Both bills were stricken in the House Committee.

During 2003, at least two General Assembly members were approached by constituents regarding benefits charging. One issue had to do with reimbursable employers; a second had to do with low-wage employers required to pay benefits calculated in accordance with an employee's higher wage experience with a prior employer who has become defunct. Senator Reynolds has asked that the Commission review the issue of benefits charging for low-wage employers. **The Commission will re-examine HB 2485 and review alternatives to current law relative to benefits charging for low-wage employers at its first meeting in 2004. [Summer 2004]**

6. Workforce Training Coordination

HB 2075, passed last session in partial response to draft recommendations of the Joint Legislative Audit and Review Commission, expanded the responsibilities of the Virginia Workforce Council and authorized it to give policy advice to the Governor on workforce and workforce development issues, and to provide policy direction to local work force investment boards. The legislation also reduced the size of the Council by 14 appointees (from 43 to 29) and established the Virginia Workforce Network to replace "Virginia's Workforce Development Program."

The Secretary of Commerce and Trade briefed the Commission on the secretariat's approach to workforce training coordination at the November 2003 meeting. The Secretariat is approaching workforce training coordination at the cabinet level through a memorandum of understanding signed by the Secretary of Commerce and Trade, the Secretary of Education, and the Secretary of Health and Human Resources. The Virginia Workforce Council is focusing on (i) consistency in goals and approaches and capacity among the local workforce investment boards and (ii) clear measures of accountability. **The Commission will continue to monitor the VEC's implementation of the changes mandated by HB 2075 and whether it has encountered specific impediments in efforts to coordinate program resources together to date. [Fall 2004]**

Senate Bill 304 creates a special advisor for workforce development in the Governor's Office. One of the special advisor's central responsibilities is to conduct a comprehensive review for each executive branch agency that identifies any job training program the agency is administering, program objectives and actions, and the estimated costs necessary to implement the program objectives. Beginning in 2006, the special advisor is to report annually

for each job-training program the total funding amounts, the number of individuals served, the extent to which program objectives have been accomplished, and how program effectiveness could be improved. Using this information, the special advisor is to develop a summary comparison of the per person costs for each program and a comparative rating of each program's success, and assess the extent to which agency appropriation requests reflect those cost and performance measures. Although the bill does not affect operation of the unemployment compensation program, it will affect the way job training program progress is tracked and measured, and may affect program funding levels. **The Commission will be briefed as to implementation of Senate Bill 304, including time frames for implementation and expected impacts. [Fall 2004].**

7. Other Issues.

This workplan may be modified to reflect other issues that are brought before the Commission during any given year.

II. COMMISSION ACTION FOR 2004

A. Meetings

The Commission will hold at least two meetings during the 2004 interim, one in the summer and one in the fall. Agendas for the meetings will be posted to the Commission's website.

B. Reports

An executive summary of the Commission's final report will be presented to the Governor and General Assembly on or before the first day of session. The executive summary will be posted to the website. A complete report will be prepared subsequent to the 2005 General Assembly Session.

C. Training

Commission staff may attend the intensive training on federal-state compliance in the unemployment compensation program that is offered by the federal Department of Labor in September annually. Staff will report to the Commission on the training at the fall 2004 meeting.

Members

Senator John C. Watkins, Chairman
Delegate Harry R. Purkey, Vice-chairman
Delegate Terry G. Kilgore
Senator Yvonne B. Miller
Delegate Samuel A. Nixon, Jr.
Delegate Lionell Spruill, Sr.
Senator Frank W. Wagner
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